



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aydin Corporation

File: B-224354

Date: September 8, 1986

DIGEST

1. Agency was not required to conduct discussions with a firm whose proposal was included in the initial competitive range, but was found technically unacceptable based on its system's performance during the operational capability demonstration. The agency properly could utilize the capability demonstration as part of an ongoing process for determining which proposals should be included in the competitive range for purposes of discussions, and once the agency determined that the protester's proposal was technically unacceptable, it properly could exclude the proposal from further consideration without discussions.

2. Operational capability demonstration was not improperly conducted on a pass/fail basis where the evaluators identified seven major and minor deficiencies in the offeror's system that rendered the system technically unacceptable. While the General Accounting Office has criticized the strict application of pass/fail test criteria that lead to the automatic exclusion of potentially acceptable proposals, those cases generally involve situations where the offeror is unable to demonstrate compliance with only one out of a number of mandatory requirements, and is eliminated from the competition solely for that reason.

3. Agency's decision to eliminate the protester's proposal from the competitive range was reasonable even though it resulted in a competitive range of one. The totality of major and minor deficiencies reasonably found by the evaluators in the protester's system after the operational capability demonstration provide adequate support for the decision.

DECISION

Aydin Corporation protests the Marine Corps' contract award to SCI Technologies, Inc., under request for proposals (RFP) No. M00027-86-R-0004 for a telecommunications control center, including a communications control system/intercommunications

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system, operator work stations, and status board equipment, to be installed in a standard, rigid-wall Army shelter. The system will be used to direct aircraft in and out of battle areas during troop deployments.

Aydin asserts that the Corps' improperly rejected its proposal as technically unacceptable after the operational capability demonstration (OCD) provided for in the RFP. Aydin alleges that the agency improperly conducted the OCD on a pass/fail basis, that Aydin's equipment performed satisfactorily, and that any deficiencies were minor and easily could have been corrected. In addition, Aydin contends that the agency failed to conduct meaningful discussions with the firm.

We deny the protest.

BACKGROUND

The RFP provided that each offeror whose proposal was within the competitive range after the initial evaluation of offers would be required to provide and demonstrate its proposed communications control system. The RFP also advised offerors that this OCD would be evaluated and scored in accordance with specified OCD evaluation categories, as well as with RFP Section "M", "Evaluation Factors for Award." The OCD evaluation factors included audio and visual signaling, over-ride, visual channel indicators, individual channel volume control, and several other factors relating to various aspects of the system's capacity and capability. Section "M", "Evaluation Factors for Award," encompassed technical approach, logistics support, program management, and general quality and responsiveness.

The RFP included functional specifications that set forth the agency's minimum requirements for the system. It also provided that the system must be compatible with certain equipment already owned by the government and must be capable of operating within specified physical constraints. Among these constraints was a requirement that the installed system be transportable by helicopter, rail, ship, or extended-bed truck.

The Corps received five offers in response to the RFP. After the initial evaluation of those offers, two were considered unacceptable and eliminated from further consideration. The three remaining offerors, including Aydin and SCI, were invited to participate in the OCD. After completion of the OCD for all three offerors, Aydin and another firm were eliminated from the competition because their systems

were considered unacceptable. This left SCI as the only offeror remaining in the competition. The Corps then conducted discussions with SCI, and after receipt of its best and final offer, awarded the firm the contract.

FAILURE TO CONDUCT DISCUSSIONS

Aydin alleges that the agency's failure to conduct discussions with the firm, after its proposal was included in the initial competitive range and it participated in the OCD, was improper and contrary to the Federal Acquisition Regulation (FAR). Aydin points out that FAR, § 15.609(a) provides that the contracting officer shall determine which proposals are in the competitive range for the purpose of conducting written or oral discussions, and that FAR, § 15.610(b) requires that discussions then be held with all offerors within the competitive range. FAR, 48 C.F.R. §§ 15.609(a), 15.610(b) (FAC 84-5, Apr. 1, 1985). Aydin asserts that only after such discussions have been held can a proposal that was included in the initial competitive range be excluded from further consideration and, therefore, that the Corps could not properly eliminate Aydin from the competition after the OCD without first holding discussions. In support of this position, Aydin also relies on FAR, § 15.609(b) which provides:

"If the contracting officer, after complying with 15.610(b), determines that a proposal no longer has a reasonable chance of being selected for contract award, it may no longer be considered for selection." (Emphasis added).

The Corps asserts that Aydin's reading of the FAR is overly restrictive and narrow. The agency argues that the initial competitive range determination made in this case was not for the purpose of conducting written or oral discussions, but instead was for the purpose of determining which offerors were sufficiently competitive to be included in the costly and time consuming OCD. The agency maintains that only after the OCD was complete did the contracting officer establish a competitive range for purposes of conducting discussions, and that Aydin properly could be eliminated from the competition at that point.

We think the agency's position is a reasonable one. We regard OCD's as extensions of the technical evaluation of proposals, the principle purpose of which is to provide a demonstration of the capability of the offered equipment to perform the required functions. NCR Corp., B-209671, September 16, 1983, 83-2 CPD ¶ 335. We have stated that

the results of such tests are strong evidence of system capabilities that must be considered in determining technical acceptability. NBI, Inc., B-201853.3, Aug. 9, 1982, 82-2 CPD ¶ 114; 47 Comp. Gen. 29, 53 (1967). Moreover, it is well-established that a proposal that properly is considered technically unacceptable may be excluded from the competitive range without discussions. See e.g., Thomas Engineering, Co., B-220393, Jan. 14, 1986, 86-1 CPD ¶ 36. Accordingly, we find no reason to object to the Corps characterization of its initial competitive range determination and the OCD as part of an ongoing process for determining which proposals should be included in the competitive range for purposes of discussions, and we do not regard this approach as contrary to the FAR.

OPERATIONAL CAPABILITY DEMONSTRATION

Aydin asserts that the agency improperly considered the results of the OCD on a pass/fail basis. Aydin also argues that the deficiencies found in its system were not sufficient to support a determination of technical unacceptability and that the agency therefore should have given Aydin the opportunity to correct those deficiencies. In addition, Aydin contends that the deficiencies were not based on specific requirements of the RFP specifications and, therefore, were not a proper basis for rejection of its system.

We find no merit to the protester's contention that the agency conducted the OCD on a pass/fail basis. While we have criticized the strict application of pass/fail test criteria that lead to the automatic and final exclusion of a potentially acceptable proposal, see, e.g., The Computer Co., B-198876, Oct. 3, 1980, 80-2 CPD ¶ 240, aff'd, 60 Comp. Gen. 151; 47 Comp. Gen. 29, 53, supra, these cases generally involve situations where the offeror has been unable to demonstrate compliance with only one out of a number of mandatory requirements and is eliminated from the competition solely for that reason. Here, the technical evaluation board identified seven specific deficiencies in Aydin's system, as demonstrated, and determined that these deficiencies rendered the proposed system technically unacceptable. Under these circumstances, we do not think the agency's actions amounted to the conduct of the OCD on a pass/fail basis.

We turn then to the question of whether the deficiencies identified by the agency in Aydin's system as a result of the OCD are sufficient to justify the determination to exclude the protester from the competitive range. Generally, offers that are technically unacceptable as submitted and would

require major revisions to become acceptable are not for inclusion in the competitive range. Ameriko Maintenance Co., B-216406, Mar. 1, 1985, 85-1 CPD ¶ 255. We will not disturb an agency's decision on competitive range absent a clear showing that it was unreasonable or contrary to the procurement statutes and regulations. BASIX Control Systems Corp., B-212668, July 2, 1984, 84-2 CPD ¶ 2. We, however, will scrutinize more closely any determination that results in only one offeror being included in the competitive range. All Star Dairies, Inc., B-209188, Jan. 31, 1983, 83-1 CPD ¶ 107.

Here, as previously noted, the technical evaluation board identified seven specific deficiencies in Aydin's system as a result of the OCD. The evaluators also found that Aydin's system could not be made technically acceptable without major revisions. While we agree with Aydin that some of the deficiencies in its system were relatively minor, we also find that several of the deficiencies were substantial ones, and that in totality, the deficiencies identified by the agency adequately justify the determination to eliminate Aydin's proposal from the competition.

Specifically, the evaluators identified three major deficiencies in Aydin's system as a result of the OCD. One of these deficiencies relates to the transportability of the system. The Corps explains that Aydin's switching system is comprised of large, edge-mounted circuit cards which traditionally have presented problems after being subjected to rough transportation. According to the agency, these cards have a tendency to twist and bend, and thus become disconnected during travel over rough terrain. In addition, the components attached to the cards become disconnected if they are not soldered on, as they apparently were not in Aydin's system. This results in a situation where all of the cards and components must be reset after each move, a time-consuming process which the agency finds unacceptable given the potentially adverse conditions under which the equipment will be used.

Aydin asserts that it discussed these potential transportability problems with the technical evaluators after completing the OCD and described measures it could take to alleviate the Corps' concerns. For example, large components could be securely attached to the circuit cards with epoxy, "hold down" bars could be added to retain the cards during transportation, and equipment cables could be more firmly secured to prevent card connections from loosening.

While Aydin believes that these steps would be sufficient to eliminate the evaluators' concerns over the transportability of its system, we think it is apparent that the evaluators considered the use of edge-mounted cards to be a basic design deficiency that was not easily correctable. The evaluators specifically noted that this deficiency "went to the heart" of the system, and the agency states that Aydin's proposed use of hold down bars is not an adequate solution to the problems associated with the system. Accordingly, we conclude that Aydin has not shown that the evaluators were unreasonable in considering the transportability problems associated with Aydin's system to be a major deficiency.

Aydin also asserts that it was not required to demonstrate the transportability of its system during the OCD, which was for the purpose of demonstrating the operational capabilities of the system, and therefore that the agency's reliance on this deficiency is improper. We disagree. The RFP specifically advised offerors that the OCD would be evaluated, in part, in accordance with section "M", "Evaluation Factors for Award." The evaluation factor "Technical Approach" contained a subfactor for evaluation of whether the proposed system satisfied the specification requirements "with regard to mobility."^{1/} Therefore, we think the agency properly could consider this aspect of Aydin's system as part of the OCD evaluation even though the OCD itself did not include a requirement that the transportability or mobility of the system actually be demonstrated. Furthermore, we do not think it necessarily was unreasonable for the evaluators to have first identified this deficiency during the OCD, rather than the prior evaluation of technical proposals, as it was at the OCD that the evaluators had a chance to actually observe the proposed system.

Aydin also argues that there was no requirement in the specifications for "ruggedization" of the system, but only a requirement that the system be transportable by rail, air, ship or truck. Given the purpose of the system to direct aircraft in and out of battle areas during deployments, we think Aydin clearly was aware, or should have been aware, that the system potentially would be transported under rugged

^{1/} Although the deficiency was not specifically characterized as one of system mobility, we think this subfactor reasonably encompasses the consideration of system transportability.

and adverse conditions. Therefore, we find no merit to this contention.

A second major deficiency in Aydin's system identified by the evaluators relates to the system's survivability in the event of enemy attack. The Corps states that this concern stems from the fact that Aydin's switching system is built around a "rack" containing the circuit cards that control the system's operation. Because the circuit cards were concentrated in one location, rather than spread among several locations in the shelter, a single "hit" could destroy the entire communications capability of the system.

In response, Aydin contends that this should not be a concern since the physical colocation of individual processors in one rack is standard practice, approved by the Department of Defense (DOD). We do not consider this statement a sufficient basis for questioning the reasonableness of the evaluation. Aydin has not shown that the alleged standard DOD practice reasonably applies to a system of this nature, nor has it submitted any evidence that such a standard practice in fact exists. Accordingly, we conclude that Aydin has not met its burden of affirmatively proving its case in this regard. See BASIX Control Systems Corp., B-212668, supra, 84-2 CPD ¶ 2. *

Aydin also argues that the OCD did not require a demonstration of the survivability of its system and thus, that the agency could not properly justify its rejection of the firm's proposal on this basis. We again note that the RFP specifically advised offerors that the OCD would be evaluated in accordance the "Evaluation Factors for Award," which included "Technical Approach." The survivability requirement, even if not specifically stated, should have been fairly obvious given the purpose for which the system will be used. Moreover, we are not convinced that Aydin has suffered any actual prejudice here since it has not shown that it could modify its system to meet the agency's actual survivability requirement in any event. See MEPECC International, B-213960, May 1, 1984, 84-1 CPD ¶ 487. Under these circumstances, we find that the evaluators reasonably considered lack of survivability to be a major deficiency in Aydin's system.

The third major deficiency found by the evaluators in Aydin's system was in its communications ability. The evaluators actually found three communications deficiencies in the

system, but with respect to two of these,^{2/} the Corps does not dispute Aydin's assertion that they were easily correctable through simple software modifications. The last of these deficiencies, however, is a more serious one.

The agency states that while Aydin's proposal indicated that its system would operate with the Corps' standard radios and was easy and quick to set-up, the OCD showed that the system was not compatible with a wide range of the Corps' radios, and required unacceptable, detailed and time-consuming adjustments to set-up. More specifically, the Corps asserts that Aydin's system lacked audio level compatibility with certain Corps radios, which resulted in radio audio levels that were virtually inaudible to the operator.

Aydin admits that during the OCD, it encountered initial difficulties interfacing with the Corps' "KY-57" communications equipment. It also states that in the process of resolving this problem, it removed circuitry from the system which controlled the volume level of all incoming transmissions, and that as a result, transmissions were received at uneven levels. The protester asserts, however, that after having removed this circuitry, it discovered that the interfacing problem was not with its equipment at all, but instead was caused by the "improper selection of the local/transmit switch on the [Corps] furnished and operated radios." Aydin did not, however, replace the circuitry for controlling the volume levels before completing the OCD, apparently because it believed that it was not necessary to do so. Aydin asserts that proper set-up procedures in the future will eliminate the problems experienced during the OCD.

The agency apparently believes that even if proper set-up of the system would eliminate the audio problems in the future, this would entail an unacceptably long and complicated set-up procedure. We find no basis to question the agency's position in this regard. The RFP specifically required that the offered system be compatible with the KY-57 equipment, and that it be "pre-wired to the maximum extent feasible to

^{2/} The first deficiency is that Aydin's system does not prevent the simultaneous transmission of secure and unsecure radio transmissions. (Secure transmissions use encryption devices to prevent unauthorized persons from receiving the radio signals.) The second deficiency is that the signal alerts (which indicate activity on a radio channel) are confusing in Aydin's system because they show the presence of activity on all channels, rather than just those being used by the radio operator.

facilitate rapid system set-up/tear-down." Moreover, while Aydin asserts that the problems it encountered during the OCD resulted from "improper" switch selection by Corps radio operators, we think this actually supports the agency's assertion that Aydin's system was not fully compatible with the Corps' radios, since we believe it reasonable to assume that the radios were being operated using normal procedures. Finally, we think that if simply replacing the circuitry would have solved the audio level difficulties, Aydin should have done so during the OCD. We recognize that Aydin apparently believed that this was not necessary, but it also knew the OCD was for the purpose of demonstrating its system's operational capabilities and nevertheless chose not to remedy what obviously was a major operational deficiency. We note in this connection that Aydin argues that the evaluators did not instruct it to replace the circuitry, not that they told Aydin this was unnecessary. We therefore conclude that the evaluators reasonably regarded the lack of full audio level compatibility as a major system deficiency.

The remaining deficiencies found in Aydin's system relate to its maintainability and system layout. We do not consider it necessary to discuss these deficiencies in detail since we think that even if Aydin is correct in its assertion that they are easily correctable, when they are coupled with the other deficiencies identified by the evaluators, they provide sufficient support for the determination that Aydin's system was technically unacceptable, and should be eliminated from the competitive range. We have found that while one or more deficiencies may not, of themselves, be sufficient reason for rejecting a proposal, it is possible that as a totality, they can justify a contracting agency's decision to eliminate a proposal from the competition because major revisions would be required to make the proposal acceptable. See RCA Service Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563. This is essentially what happened here, and based on our review of the record, we find that the Corps' conclusion was reasonable, particularly since several of the deficiencies were major ones that were not easily correctable.

We are mindful of the fact that Aydin's elimination from the competition effectively limited the competitive range to one firm. However, even a technically acceptable proposal may be eliminated from the competitive range if it has no reasonable chance for award, notwithstanding the fact that its elimination results in a competitive range of one. See Lloyd E. Clayton Associates, B-205195, June 17, 1982, 82-1 CPD ¶ 598. In this case, the record shows that in addition to the specific deficiencies found in Aydin's system, the evaluators had a fundamental concern that Aydin's system simply was not

suitable for use in a combat environment. This concern is summarized in a memorandum of May 19, 1986, from the Director, Contracts Division:

"Numerous aspects of [Aydin's] written proposal were evaluated in a more revealing light at the OCD. Of primary importance were the system peculiarities which function well in the benign environment of a fixed-installation, non-tactical environment but are unsuitable for mobile, Marine Corps . . . application."

In contrast, the evaluators clearly viewed SCI's system as providing a far better solution to the agency's needs.^{3/} Under these circumstances, we think it unlikely that Aydin's system could have been brought up to the level of SCI's superior one through the conduct of discussions. Moreover, while Aydin's proposal was significantly lower in price than SCI's, the RFP provided that technical considerations would be given considerably more weight than price in the proposal evaluation. We therefore do not think the Corps abused its discretion by including only SCI in the competitive range for the purposes of discussions. Id.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel

^{3/} While the record before us does not include the OCD evaluation report on SCI's proposal, it does contain the May 19, 1986, memorandum from the Director, Contracts Division, summarizing the technical evaluation of both SCI and Aydin, based on their performance in the OCD.